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C.O.M.A. and The Commander's Power
to Authorize Searches: A New Direction

CPT John F. Bender, USAR

Traditionally, the commander has enjoyed wider latitude under military law in the search authorization process than his civilian counterpart, the judge or magistrate. During the last year, however, the Court of Military Appeals in several important decisions has severely limited that latitude and required the commander to conduct himself more like a civilian judge or magistrate. This article will briefly discuss the relevant C.O.M.A. decisions, the resultant impact on commanders and SJA's, and what the future may bring in this fast changing area of military criminal law.

United States v. Ezell ¹

In *Ezell* and its companion cases the Court required that commanders who authorized searches under paragraph 152 of the Manual be "neutral and detached magistrates." While not announcing a new rule of law,² the Court restricted those activities in which a commander could engage, both prior and subsequent to authorizing a search, and still be considered neutral and detached under the Fourth Amendment. Judge Perry, writing for the majority, stated: "When a commander becomes personally involved as an active participant in the gathering of evidence or otherwise demonstrates personal bias or involvement in the in-

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DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF:

DAJA-ZB

12 July 1980

SUBJECT: JAGC Professional Recruiting Office

ALL MEMBERS OF THE JUDGE ADVOCATE GENERAL'S CORPS

1. The Judge Advocate General's Corps Professional Recruiting Office will become operational on 1 July 1980. Captain Timothy E. Naccarato will be the Chief Recruiting Officer, assisted by Captains Donald P. DeCort and Francis R. Moulin. Specifics of the new office are contained in the PP&TO personnel section of this issue.
2. The purpose of this new office is to expand our recruiting effort to eliminate the present shortfall of approximately 120 officers and assure that we get our fair share of legal talent in the future. Captain Naccarato and his staff will train field screening officers, develop more effective recruiting literature and advertising programs, coordinate the Law School Liaison and Summer Intern Programs, and maintain close contact with JAGC prospects, applicants and selectees. While field screening officers will still provide the primary contact with law schools, the expanded support to our field efforts should yield an increase in the number of applications from highly qualified male, female, and minority applicants.
3. We will continue to find good lawyers only if all of us remember that we have an individual responsibility to encourage qualified applicants, particularly women and minorities, to seek a commission in the Corps. Our recruiting effort is too important to be restricted only to those who have been directly appointed to accomplish the Corps' recruiting goals. Every judge advocate is expected to be a recruiter for our Corps.

Hugh J. Clausen
HUGH J. CLAUSEN

Major General, USA
Acting The Judge Advocate General

(Continued from page 1)

vestigative or prosecutorial process against the accused, the commander is devoid of neutrality." In addition, he listed six factors which could disqualify the commander from authorizing a search:

1. approving or directing the use of informants
2. approving the use of drug detection dogs
3. using controlled buys
4. approving surveillance operations
5. approving or using other similar activities
6. being present at the scene of a search except in "very extraordinary circumstances to be determined on a case by case basis."

It appears that the Court now has established a two-pronged test to determine a commander's impartiality. First, an objective test which focuses on the above-stated factors. If a commander has used any of these "law enforcement tools," he will probably be disqualified. The second prong appears to be a subjective "bias" test. A commander who passively receives information concerning a soldier who later becomes the subject of a search authorization request will probably be considered impartial because the commander has not actively

engaged in the law enforcement process. However, it may be argued that if, on the basis of prior passive information or contacts, the commander has formed or expressed a definite opinion that the soldier who is now the subject of a search authorization request is engaged in illegal activity or the commander has otherwise subjectively assumed an adversary posture toward the soldier in a law enforcement or prosecutorial sense, he will probably be disqualified since he is no longer "impartial."

It is readily apparent that *Ezell* makes the position of the SJA in advising commanders on their role in the search authorization process more complicated. On the one hand, commanders are encouraged by higher authority and their own desire to maintain effective units to use all available tools to ferret out criminal activity in their units, especially drug activity. The commander who fails to do so will in all probability not long be a commander. On the other hand, the advising SJA must now tell his commander that if he does fulfill this traditional role, he may well disqualify himself from authorizing searches of his unit. Also, the commander must be advised to maintain, if possible, an open mind concerning his soldiers irrespective of information he might have passively

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received. Otherwise, his impartiality may be undermined. If the commander or SJA perceives an *Ezell* problem, consideration must be given to seeking authorization from the next higher commander who has search authorizing authority and can be demonstrated to be impartial.

Many questions raised by *Ezell* remain unanswered by C.O.M.A. For example, can a time lag between use of one or more of the specified law enforcement tools and a search authorization request sufficiently attenuate the commander's "active participation," thus allowing him to authorize the search? If so, how much time is sufficient? Must the use of the law enforcement tool by the commander be directed towards the soldier who is now the subject of a prospective search or will use of the tool against any soldier or group of soldiers disqualify the commander? Is the "lack of bias" test totally subjective or will the Court weigh the amount and quality of prior information possessed by a commander to determine if it was reasonable for him to claim impartiality when authorizing a search? Finally, what are the "very extraordinary circumstances" that will allow a commander to participate in or be present at the scene of a search he authorizes?

C.O.M.A. has indicated in a summary disposition order that knowledge of an accused's prior drug activities based on information supplied by informants and CID reports as well as knowledge that the accused was presently pending drug charges did not, in itself, disqualify a commander from authorizing a search.³ Further, the Court has reversed summarily decisions in several cases where the commander was present at the scene of a search he authorized.⁴ In *United States v. Powell*,⁵ for example, the Court affirmed a conviction where a commander was called to the scene and thereafter authorized a search. The commander had no prior involvement and did not participate in the search. The Court held that the officer's presence at the scene was a part of the application process and did not indicate he was involved in the "competitive enterprise of ferreting out crime."

The various Courts of Review have dealt with two of the questions raised previously, thus providing at least limited guidance for commanders and SJA's. In one Air Force case, a commander had received OSI briefings on criminal investigations and may have known of the informant who supplied information to support the search authorization. The Court, in interpreting *Ezell*, held in effect that the commander's prior involvement in the investigative or prosecutorial function must be *against the accused*, not some general involvement in law enforcement activities.⁶

In two Army cases, one panel of the Court of Review held that presence at the scene of the search by the authorizing commander raises only a presumption of partiality which can be rebutted by the prosecution.⁷ The Court indicated that more command involvement at the scene of the search would necessarily place a higher burden on the prosecution to show impartiality. C.O.M.A. has yet to review the rationale adopted in these cases.

United States v. Fimmano⁸

On 21 January 1980, the Court imposed the requirement that information given a commander to support a probable cause determination must be under oath or affirmation. This represents a radical departure from prior military law and moves military practice one step closer to civilian practice.⁹ The Court, again speaking through Judge Perry, found no general military necessity for dispensing with the oath or affirmation requirement. The Court did note, however, that specific instances of military necessity which would equate with "exigent circumstances" might overcome the requirement in individual cases. Although the Court did not specifically address the question, it appears that only the person actually communicating with the authorizing commander need be placed under oath or affirmation.

Again no real guidance is given the commander or SJA as to what type of necessity might obviate this requirement. Will the fact that the officer empowered to administer oaths

is away on other duties satisfy the necessity exception or will the Court weigh the difficulty in obtaining an oath against the necessity to search in a speedy fashion? If so, what factors will be considered? Can the oath or affirmation be administered over the telephone or must the affiant personally appear before the administering officer? The Court did suggest that the President might expand the classes of officers who may administer oaths, but questions still remain.

The Army, by way of regulation, has now empowered any commander who can authorize a search to administer oaths to those persons who personally communicate information used as the basis for probable cause.¹⁰ Further, the commander may receive such information and administer oaths over the telephone or other oral communications device.

United States v. Dillard¹¹

In *Dillard* the Court applied the exclusionary rule to evidence obtained as the result of a search because the search authorization was oral and not in writing as required by a USAREUR regulation. In *Fimmano* both Judge Perry and Judge Fletcher recommended the use of a recording procedure for search authorizations as embodied in Federal Rule of Criminal Procedure 41. It appears the Court may be serving notice that such a recording procedure will be the next major change in the authorization process. If such a requirement is imposed, hopefully the Court will recognize an "exigent circumstances" exception in appropriate cases.

The Military Rules of Evidence

On 1 September 1980 the new military evidence rules as promulgated by the President take effect. Rule 315 is the President's response to the requirements laid down in the foregoing cases. In effect, the rule provides that an authorizing official does not lose his impartiality solely because he is present at a search or has previously authorized investigative activities in the manner authorized by Federal District Courts. Further, the rule expressly

provides for oral authorizations. The rule is silent as to an oath or affirmation requirement.

It is apparent that C.O.M.A. will have the final say on the validity of Rule 315. If the Court maintains its present posture and fails to limit its broad holdings in *Ezell*, then at least a part of Rule 315 may be struck down. Further, if *Dillard* is extended to impose a recording requirement for search authorizations, then Rule 315 will be overruled in that respect.

Conclusion

It is evident that commanders must now be more cognizant of the different and often conflicting roles they must fulfill—as commanders maintaining the efficacy of their units and as magistrates acting judicially when authorizing searches. Further, a new procedural step of administering oaths before authorizing searches must be met. It is impossible to predict what the future holds for the commander in this area. Judge Everett has now replaced Judge Perry who wrote the majority opinions in the C.O.M.A. cases cited in this article. His views may well be determinative. However, it is doubtful the Court will totally overrule *Ezell*, *Fimmano*, and *Dillard* and return to the pre-*Ezell* era no matter what Judge Everett's views are. The need for stability and continuity within the system outweighs a total eradication of a line of cases based on one judge's individual philosophy.

Hopefully, the Court will re-examine *Ezell*. The *per se* disqualifying factors propounded in that case should not, in themselves, determine whether a commander is neutral and detached but should be considered in the overall determination of impartiality. The oath or affirmation requirement laid down in *Fimmano* will probably work no great hardship on commanders in the search authorization process. However, extending *Dillard* to require recording of search authorization would impose an unnecessary burden on commanders and not substantially improve the reviewing process.

Without question the commander's role in authorizing searches has taken a new direction.

Whether that direction will lead to more participation by military judges and magistrates as favored by Judge Fletcher,¹² a return to the pre-*Ezell* standards as favored by Judge Cook,¹³ or some new direction is yet to be seen. Since the Supreme Court has never addressed the application of the Fourth Amendment to the military, C.O.M.A. is free to impose its will in this area. It is important to note that the Supreme Court has on many occasions upheld the proposition that the unique character of the military environment and the mission of the armed forces necessitates a different application of individual constitutional rights.¹⁴ The judges of the Court of Military Appeals should strongly consider this reasoning in future decisions involving the Fourth Amendment.

FOOTNOTES

¹ 6 M.J. 307 (C.M.A. 1979).

² See, e.g., *United States v. Staggs*, 48 C.M.R. 672 (C.M.A. 1974).

³ *United States v. McCarthy*, 7 M.J. 42 (C.M.A. 1979).

⁴ *United States v. Morrison*, 7 M.J. 49 (C.M.A. 1979); *United States v. Gorman*, 7 M.J. 50 (C.M.A. 1979). In *United States v. Wenzel*, 7 M.J. 95 (C.M.A. 1979), the Court in a full opinion reversed a conviction on the basis of *Ezell* where the commander had initiated a controlled buy of amphetamines from the two accused and immediately thereafter arrested them and authorized a search of their room.

⁵ 8 M.J. 260 (C.M.A. 1980).

⁶ *United States v. Phillips*, 7 M.J. 955 (A.F.C.M.R. 1979).

⁷ *United States v. Duhart*, 8 M.J. 671 (A.C.M.R. 1979); *United States v. Cuffee*, 8 M.J. 710 (A.C.M.R. 1979).

⁸ 8 M.J. 197 (C.M.A. 1980).

⁹ *United States v. Penman*, 36 C.M.R. 226 (C.M.A. 1966); *United States v. Hartsook*, 35 C.M.R. 263 (C.M.A. 1965).

¹⁰ Interim Change No. 104, AR 27-10 (28 January 1980), paras. 5-1, 5-8, 5-9, 5-10.

¹¹ 8 M.J. 213 (C.M.A. 1980).

¹² In concurring opinions in both *Ezell* and *Wenzel*, Judge Fletcher strongly indicates his preference for referral of search authorization requests to military judges or magistrates when practicable.

¹³ See Judge Cook's dissenting opinions in *Ezell*, *Fimmano*, and *Dillard*.

¹⁴ See *Brown v. Glines*, 100 S. Ct. 594 (1980); *Middledorf v. Henry*, 425 U.S. 1281 (1976); *Schlesinger v. Councilman*, 420 U.S. 738 (1975); *Parker v. Levy*, 417 U.S. 733 (1974); *Burns v. Wilson*, 346 U.S. 137 (1953).

The *Brown* case is the Court's latest pronouncement of the application of the Bill of Rights to the military. While addressing the application of the First Amendment to the military, Mr. Justice Powell, writing for the majority, states in effect that courts must be careful not to circumscribe the authority of military commanders to an extent never intended by Congress in dealing with matters of internal discipline and morale.

Recruiting and Retention of Women in the Judge Advocate General's Corps

Introduction

Recruiting and retention of qualified lawyers are the touchstones of an effective Judge Advocate General's Corps. While this is true regardless of the gender of the individuals involved, The Judge Advocate General (TJAG) is now placing increased emphasis on the female law school population as prospective applicants. This is due to the increasing number of women now attending law school. A similar emphasis has been placed on retaining female JAGC officers, not only because they are excellent attorneys, but because the most effective recruiting tool for women lawyers is a visible

contingent of competent women lawyers at all levels of the JAGC.

The law school population has changed markedly over the last 10 years. Women law students now comprise approximately one-third of the law school population.

The percentage of women JAGC lawyers has not risen as dramatically. Of over 1,400 JAGC officers on active duty there are only 89 women—4 majors and 85 captains. If the JAGC does not commission more women lawyers, the effect of the change in law school population will be a de facto 33 percent reduction in the recruiting

base. This cannot help but reduce the quantity and quality of prospective applicants for the JAGC.

Working Group Meeting

As a first step in addressing this situation TJAG gathered a working group of men and women in the Pentagon in January to discuss the Corps' women recruiting program. The women selected to participate were representative of those currently serving in the JAGC—some were on their first tour while others were career officers. The men who attended were law school recruiters and officers responsible for recruiting in the Personnel, Plans, and Training Office (PP&TO). A placement director from a local District of Columbia law school also participated.

The working group evaluated the current situation for the purpose of making recommendations to TJAG on how to achieve a marked increase in the number of women in the JAGC.

The group developed several possible reasons for the low JAGC application rate for women:

a. Women are actively sought by large civilian firms. In many respects the JAGC is not now competitive with the civilian opportunities open to the best women law graduates.

b. Many women in law schools today are older, married to men with established civilian careers, and unwilling to relocate.

c. While many families are willing to interrupt the wife's career in favor of the husband's, the converse is the exceptional case.

d. For those women whose professional aspirations are compatible with a military career, the Army has an image problem. Law students tend to view Army women as "different" in a disparaging way. Army media advertising generally projects women in blue collar roles and works at cross purposes to the desire to project the female JAGC officer as a professional. JAGC advertising has done little to offset this impression because it has concentrated on male law students.

e. An internal JAGC problem with recruit-

ing women is that all Corps field recruiters have been men and many have never worked with a female attorney. In the existing job market for women attorneys, they lack credibility with prospective female applicants who are concerned and skeptical about the role of a woman JAGC officer.

The working group's overall evaluation of JAGC recruiting was that it is basically passive and has done little to overcome preexisting prejudices many law students have against the Army. Most initial contacts with law students are accomplished by mailing information packets in answer to requests for information sent in response to JAGC advertisements in law journals. On campus law school recruiting has, until this year, taken place only once a year during the fall. Ordinarily, the field recruiters contact law school placement directors who post notices on placement bulletin boards. Students interested in an interview make an appointment. Little active effort beyond the fall visit to law schools occurs. This is primarily due to the modest budget available for recruiting and the fact that our field recruiters are active duty JAGC officers assigned full time duties in field JA offices. Thus, on-campus recruiting tends to be impersonal with little follow-up with interested students. Employers with more aggressive programs easily present a more attractive career opportunity under these circumstances.

TJAG's Response

Based on the evaluation of JAGC recruiting by this group, TJAG directed that major changes be introduced in overall lawyer recruiting and in particular with regard to women. Funds were obtained for a spring on-campus recruiting effort at law schools and two women JAGC officers were sent on pilot visits to selected law schools with a high female population. In addition, they talked with the JAGC field recruiters, law school placement directors, and prospective applicants in an effort to find answers to the issues described in this article. Interestingly, none of the placement directors had useful statistics on the number of women in their schools who would not relocate. Most

simply guessed that there were a good number of women who were not candidates for the JAGC, either by virtue of age or firm geographical preference for employment.

All of the placement directors heartily supported a woman JAGC officer as an interviewer. In one instance, five of the women interviewed had been interviewed earlier by male JAGC officers. None had applied for the next accession board. One of the many factors accounting for this was their uncertainty about what it was really like to be a woman in the Army. Four of them subsequently applied after interviewing with a woman. The perspective of a woman helped them to make the application decision. Ironically, one woman law student interviewed was insulted because she was relegated to speaking to a female rather than a male counterpart. She felt that such a gesture exposed sexism in the Army. The vast majority, however, welcomed the visits by women recruiters and urged a continuing liaison between a female JAGC officer and a women's law student groups as well as the placement directors. One thing is clear, a female JAGC officer recruiting women in law schools will do more to dispel prevailing reluctance to apply for a JAGC commission than anything else that can be done.

It is apparent that a greater effort and dollars are needed to resolve the problems of impersonal and passive recruiting. To this end, a new three officer recruiting office will be established in July at USALSA. This development triples the number of officers working in JAGC recruiting and carries an annual field recruiting budget of \$90,000. On an annual basis this is \$80,000 more than has ever been available in prior years for on-campus recruiting and related costs. The recruiting officers will execute a broadened and aggressive recruiting program, with appropriate advertising targeting women and minority candidates, and will be responsible for creating effective liaison with national groups that have high visibility with the law student population. They will also personally respond to requests for information from law students and follow up on a personalized basis. Personal attention will be given each lawyer

selected for a JAGC commission in an effort to answer the many questions all individuals have prior to commissioning.

The recruiting office will go far to resolve another problem addressed by the working group—the failure of many individuals to accept commissions once tendered. This failure was often due to the lengthy time between notification of selection and the call to active duty with little contact between the Corps and the prospective officer. This payless period without JAGC contact results in a loss of confidence and causes some individuals to accept another job. The capability for continuing personal contact which the new office allows will go a long way in reducing the drop out rate.

Retention—From a Woman's Point of View

The working group also considered problems in retaining qualified women. Many women perceive that they are treated differently in job assignments and career opportunities. Specifically, a perception exists that a disproportionate number of women are not permitted to acquire the trial experience they may desire and need. We have not yet had the opportunity to determine the accuracy of this perception. A recent survey taken in USAREUR, however, indicates that women in the JAGC are being given their fair share of opportunities to gain desired trial experience. USAREUR JAGC women are represented in courtroom practice and in legal assistance or claims positions in percentages similar to their representation in the USAREUR legal workforce. Approximately 12 percent of USAREUR JAGC officers are women. Women comprise 10 percent of trial counsel and 10 percent of defense counsel. Eight of the 27 women assigned to USAREUR are assigned to duties which primarily include legal assistance or claims. Twelve of the 27, however, are assigned to the Trial Defense Service or trial counsel positions. Many other positions involve some of each skill. In a recent trip to USAREUR, the Chief, PP&TO, interviewed women attorneys concerning job satisfaction and determined that high morale is the norm, not the exception there.

PP&TO notes that staff judge advocates routinely give new officers a variety of job experience during a first tour. An SJA's concern most often centers on energy and competence of counsel and not gender. Women are being selected for key positions in the Corps. The first woman officer has been assigned to serve in PP&TO and women officers continue to serve on the staff and faculty of the JAG school. Others are being assigned to key positions in USAREUR and Korea. In short, while there is room for improvement with regard to job opportunity for women, important steps in the right direction have been taken.

Even though duty position assignment is the single most important factor in office interrelationships, other conditions also exist which concern the female officer. Some women believe they are treated differently on the job than their male counterparts. This problem varies from paternalism by senior officers to cases of "sexual harassment." Sexual harassment may take many forms, from ridiculous comments to sexual coercion. Many people do not understand how female officers should be treated. Secretaries sometimes want to include the female Army officer as "one of the girls." Army wives are unsure whether they should include the female JAGC officer in wives' functions. One example of an inappropriate method of treatment occurs when male JAGC officers introduce a woman officer in the office by her first name while they introduce men by their rank and last name. The male officer may consider it harmless familiarity showing confidence rather than disrespect, but the female JAGC officer may perceive that the different treatment undermines her status as a professional.

There is no right or wrong response by women to any of these situations. Women should realize that their seniors, peers and subordinates almost always act in good faith. Overreaction to a set of apparent but unintentional discourtesies may cause an instant loss of credibility. The preferable approach is to wait long enough to prove one's credibility. The development of professional credibility between peers and superiors is the most effective process

through which the unconscious biases of the past will be overcome.

The scarcity of senior female JAGC officers causes several problems. For example, there are no senior women to serve as role models. Single female JAG's feel a significant degree of social isolation and married female JAG's perceive that Army couples are treated as problems rather than assets. Each of these issues serves to encourage women to leave, rather than stay in the Army. These problems thus become self-perpetuating. It is absolutely essential for the achievement of a healthy career program for women officers that more quality women decide to stay on active duty.

The men in the JAGC will gradually adapt to the growing numbers of women professionals in the same way male law students have adapted to their female counterparts. Part of the adaptation will be due to natural yearly attrition of those individuals whose cultural biases cause them to resist this adaptation. Part will come from the ability of those remaining to evaluate the contributions of their female peers on their merits. Thus, it is essential that the quality of the women who are tendered a commission and who are selected for career status be monitored as closely as it is for the men in the Corps. Bending standards in favor of gaining numbers will hurt the acquisition and retention of quality women in the future.

Conclusion

As the number of women in law school increases, the Judge Advocate General's Corps must vigorously recruit them—equally as vigorously as male attorneys. We believe that the Corps has initiated some meaningful steps toward enhancing our recruiting of qualified women. We must take commensurate steps if we are to be successful in retaining them. They must be given challenging assignments for career development. Given the opportunity, more women will earn reputations as top quality professionals in the Corps. We look forward to the time when we will have a contingent of capable women attorneys at all echelons in the Corps.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

9 JUN 1980

DAJA-CL 1980/4971

SUBJECT: Relations With News Media

STAFF JUDGE ADVOCATES

1. Recent events have surfaced the need to reemphasize Army policy regarding dissemination of information to the news media. I urge all judge advocates to thoroughly acquaint themselves with the policies expressed in AR 360-5 and AR 340-17 on the release of information. Additional material on the ethical considerations regarding publicity is contained in DA Pam 27-173.
2. Normally, the public affairs office (PAO) of the local command will answer all news media inquiries. I recommend that you establish with your PAO, as well as those PAOs servicing your branch offices, local procedures for handling inquiries concerning legal matters. These procedures should insure that the PAOs look to you as the source of information concerning legal matters, and not the members of your office or branches. Individual counsel should not be placed in the position of defending or explaining the results of a case, or speaking for the command. Generally, no member of your office should prepare a written statement for publication or permit himself or herself to be quoted on official matters within the purview of your office without your approval. By having you or your deputy approve the release of information concerning legal matters we promote accuracy, guard against confusion, and best serve the "public's right to know." For personnel assigned to the US Army Trial Defense Service (TDS), all responses to the news media will be handled in accordance with established TDS procedures.
3. Judge advocates are reminded that in responding to news media inquiries they are limited by the Code of Professional Responsibility and AR 340-17 as to the type of information which may be released, and the method of release. Response to news media questions can best be made through the PAO where the questions and answers can be fully considered. By responding to inquiries within the above considerations, judge advocates will be better situated to assist the news media by providing complete and accurate information about legal matters in their area of responsibility without the misunderstandings, misquotes, or misinterpretations that often arise.

Hugh J. Clausen
HUGH J. CLAUSEN

Major General, USA
Acting The Judge Advocate General

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

DAJA-CL 1980/4959

28 MAY 1980

SUBJECT: Post-Trial Processing Time

STAFF JUDGE ADVOCATES

1. Post-trial processing time remains a matter of personal concern to me. Statistics indicate that since the decision in United States v. Banks, 7 M.J. 92 (CMA 1979) the average processing time has increased by about 10 days.
2. The inflexible rule established by the Dunlap decision was a matter of extreme frustration for most staff judge advocates. However, it is probably fair to say that the Dunlap result was caused by our failure to properly manage the post-trial processing of our cases. Two hundred and three hundred day cases were not uncommon prior to Dunlap.
3. In Banks, the Court of Military Appeals concluded that the Dunlap rule was no longer required in light of other procedures which were not in existence at the time of the Dunlap decision. Nevertheless, the most effective protection of a soldier's expectation of prompt convening authority action is aggressive management of the post-trial processing. This is a duty and responsibility of the staff judge advocate which cannot be delegated, and must be vigorously pursued.
4. Although the requirement to take action within 90 days is no longer mandated, it is a handy management tool to test the effectiveness of your organization. I recommend that your goal should be to take action within 90 days in all cases and that you manage your assets with the same intensity as you did under Dunlap. We simply cannot afford to return to the inflexibility of the Dunlap rule.

A handwritten signature in cursive script, reading "Hugh J. Clausen", is positioned above the typed name.

HUGH J. CLAUSEN
Major General, USA
Acting The Judge Advocate General

Judiciary Notes

U.S. Army Legal Services Agency

Digest—Article 69, UCMJ, Application

In *Martinez*, SPCM 1980/4660, the court which was convened to try the accused had been reduced by challenges to two enlisted and five officer members. The trial counsel obtained excusal by the convening authority of an officer member to restore the court to jurisdictional balance. The defense objected to that procedure, but was overruled.

Excusal of a court member after assembly is proper only for good cause, i.e., an emergency condition or unusual circumstances. *US v. Clark*, 47 CMR 75 (ACMR 1973). Failure of a court-martial quorum is not such an unusual condition. The proper remedy would have been to add additional enlisted members. Paragraph 37b, MCM 1969 (Rev.). This defect in the appointment of the court members was jurisdictional in nature. *Wright v. United States*, 2 MJ 9 (CMA 1976).

Another issue was involved in *Martinez*. The court was informed that the accused was facing trial on two offenses of making a false official statement and one of unauthorized absence. However, in his opening statement, the trial counsel informed the court members that he

did not intend to prosecute one of the specifications of making a false official statement. He also told the members that they had to enter a finding of not guilty to that specification. There were no cautionary instructions by the military judge or objections by the defense.

Where the government is aware that there is no evidence to present on a particular offense, it is error to present that offense to the court. *US v. Phare*, 21 USCMA 244, 45 CMR 18 (1972); *US v. Duncan*, 46 CMR 1031 (NCMR 1972); *US v. Carroll*, 37 CMR 870 (AFBR 1967); *US v. Bird*, 30 CMR 752 (CGBR 1961). Having occurred, the error must be tested for prejudice. Prejudice has not been found where the charge was dismissed and the accused pleaded guilty to the remaining charges, *US v. Phare*, *supra*, or the evidence of guilt is "so compelling as to dispel any reasonable likelihood that [the accused] could have been prejudiced. . . ." *US v. Carroll*, *supra*, at 874. In this case, the evidence was not compelling and the accused did not enter a plea of guilty. Therefore, the error could not be said to be harmless.

Relief was granted. The findings and sentence were set aside and the charges were dismissed.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

Mobilization Designee Vacancies

A number of installations have recently had new mobilization designee positions approved and applications may be made for these and other vacancies which now exist. Interested JA Reservists should submit Application for Mo-

bilization Designation Assignment (DA Form 2976) to The Judge Advocate General's School, ATTN: Colonel William L. Carew, Reserve Affairs Department, Charlottesville, Virginia 22901.

Current positions available are as follows:

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|----------------|--------------------|----------------|
| LTC | 18 | 01C | 01 | Legal Officer | DCS Personnel | Washington, DC |
| MAJ | 01N | 01A | 01 | Judge Advocate | Fitzsimons AMC Cmd | Aurora, CO |

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|----------------------------------|-----------------------|--------------------|
| MAJ | 06 | 04 | 04 | Asst SJA | USA Health Svcs Cmd | Ft Sam Houston, TX |
| MAJ | 01A | 01A | 01 | Dep Ch Atty (Proc Background) | Def Supply Svc | Washington, DC |
| CPT | 01A | 02A | 01 | Dep Ch Atty (Proc Background) | Def Supply Svc | Washington, DC |
| LTC | 06 | 04 | 09 | Mil Judge | USALSA | Falls Church, VA |
| CPT | 07 | 06 | 02 | Judge Advocate | USALSA | Falls Church, VA |
| LTC | 09C | 03 | 01 | Intl Affairs | OTJAG | Washington, DC |
| MAJ | 10D | 03 | 01 | Admin Law | OTJAG | Washington, DC |
| MAJ | 15 | 03 | 02 | JAG Leg Asst Of | OTJAG | Washington, DC |
| LTC | 14 | 02 | 01 | Admin Law | OTJAG | Washington, DC |
| LTC | 05A | 02 | 01 | Dep Chief | USA Clms Svc | Ft Meade, MD |
| LTC | 48 | 02M | 01 | Dep SJA | US Mil Academy | West Point, NY |
| CPT | 48 | 08M | 02 | Asst SJA | US Mil Academy | West Point, NY |
| MAJ | 04 | 02 | 01 | Asst SJA | MTMC Eastern Area | Bayonne, NJ |
| MAJ | 09 | 01A | 01 | JA | USA Dep Newcumberland | Newcumberland, PA |
| MAJ | 78B | 02 | 01 | Cmd JA | USA Depot | Corpus Christi, TX |
| MAJ | 26C | 01A | 01 | Legal Advr | USA TSARCOM | St Louis, MO |
| CPT | 08C | 01A | 01 | Trial Counsel | 172d Inf Bde | Ft Richardson, AK |
| CPT | 08C | 01A | 02 | Trial Counsel | 172d Inf Bde | Ft Richardson, AK |
| CPT | 08C | 02A | 01 | Defense Counsel | 172d Inf Bde | Ft Richardson, AK |
| CPT | 08C | 02A | 02 | Defense Counsel | 172d Inf Bde | Ft Richardson, AK |
| MAJ | 10A | 02 | 01 | Asst SJA | Sixth US Army | Presidio SF, CA |
| MAJ | 03 | 04 | 01 | Asst SJA | USA Garrison | Ft Ord, CA |
| CPT | 03B | 02 | 01 | Asst SJA | USA Garrison | Ft Ord, CA |
| CPT | 03B | 02 | 02 | Asst SJA | USA Garrison | Ft Ord, CA |
| CPT | 03B | 01B | 03 | Trial Counsel | USA Garrison | Ft Devens, MA |
| CPT | 03C | 01A | 03 | Defense Counsel | USA Garrison | Ft Devens, MA |

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|-------------------|---------------|-----------------|
| LTC | 05 | 02 | 01 | Dep SJA | USA Garrison | Ft Bragg, NC |
| MAJ | 05A | 03 | 01 | Contract Law Off | USA Garrison | Ft Bragg, NC |
| MAJ | 05A | 04 | 01 | JA | USA Garrison | Ft Bragg, NC |
| LTC | 05B | 01 | 01 | Ch, Mil Justice | USA Garrison | Ft Bragg, NC |
| MAJ | 05B | 03 | 01 | Trial Counsel | USA Garrison | Ft Bragg, NC |
| CPT | 05B | 04 | 01 | Asst JA | USA Garrison | Ft Bragg, NC |
| CPT | 05B | 05 | 01 | Asst JA | USA Garrison | Ft Bragg, NC |
| CPT | 05B | 07 | 01 | Defense Counsel | USA Garrison | Ft Bragg, NC |
| CPT | 05B | 08 | 01 | Trial Counsel | USA Garrison | Ft Bragg, NC |
| MAJ | 05C | 02 | 01 | JA | USA Garrison | Ft Bragg, NC |
| MAJ | 05D | 01 | 01 | Claims Off | USA Garrison | Ft Bragg, NC |
| CPT | 03A | 02 | 04 | Trial Counsel | 101st Abn Div | Ft Campbell, KY |
| MAJ | 03B | 01 | 01 | Ch, Def Counsel | 101st Abn Div | Ft Campbell, KY |
| CPT | 03B | 02 | 04 | Def Counsel | 101st Abn Div | Ft Campbell, KY |
| CPT | 03D | 06 | 02 | Asst SJA-DC | USA Garrison | Ft Stewart, GA |
| MAJ | 03E | 01 | 01 | Asst SJA | USA Garrison | Ft Stewart, GA |
| CPT | 52C | 02 | 02 | Asst SJA | USA Garrison | Ft Stewart, GA |
| LTC | 03 | 02 | 01 | Dep SJ | USA Garrison | Ft Hood, TX |
| LTC | 03B | 01 | 01 | Ch, Crim Law | USA Garrison | Ft Hood, TX |
| LTC | 03C | 01 | 01 | Def Counsel | USA Garrison | Ft Hood, TX |
| MAJ | 03D | 02 | 02 | Asst JA | USA Garrison | Ft Hood, TX |
| MAJ | 03E | 01 | 01 | Ch, Legal Asst Of | USA Garrison | Ft Hood, TX |
| CPT | 03E | 03 | 01 | Legal Asst Off | USA Garrison | Ft Hood, TX |
| CPT | 03E | 03 | 02 | Legal Asst Off | USA Garrison | Ft Hood, TX |
| CPT | 03F | 03 | 01 | Asst Clms Off | USA Garrison | Ft Hood, TX |
| CPT | 03B | 03 | 01 | Def Counsel | 5th Inf Div | Ft Polk, LA |
| CPT | 03B | 03 | 02 | Def Counsel | 5th Inf Div | Ft Polk, LA |
| CPT | 03B | 03 | 03 | Def Counsel | 5th Inf Div | Ft Polk, LA |
| CPT | 03B | 03 | 04 | Def Counsel | 5th Inf Div | Ft Polk, LA |
| CPT | 03B | 04 | 04 | Trial Counsel | 5th Inf Div | Ft Polk, LA |
| MAJ | 03C | 01 | 01 | Asst SJA | 5th Inf Div | Ft Polk, LA |

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|--------------------|----------------|-----------------|
| MAJ | 03C | 01 | 02 | Asst SJA | 5th Inf Div | Ft Polk, LA |
| MAJ | 03C | 01 | 01 | Ch, Mil Justice | USA Garrison | Ft Sheridan, IL |
| MAJ | 02A | 02 | 01 | Ch, Def Counsel | USA Garrison | Ft Riley, KS |
| MAJ | 02B | 03 | 01 | Ch, Legal Asst | USA Garrison | Ft Riley, KS |
| CPT | 02B | 04 | 01 | Asst JA | USA Garrison | Ft Riley, KS |
| CPT | 02C | 02 | 01 | Asst JA | USA Garrison | Ft Riley, KS |
| CPT | 03B | 03 | 02 | JA | Ft McCoy | Sparta, WI |
| CPT | 03B | 03 | 03 | JA | Ft McCoy | Sparta, WI |
| CPT | 03B | 03 | 04 | JA | Ft McCoy | Sparta, WI |
| CPT | 03C | 02 | 02 | Mil Aff Leg Asst O | Ft McCoy | Sparta, WI |
| MAJ | 66 | 02 | 01 | JA | Ft McCoy | Sparta, WI |
| MAJ | 03D | 01 | 01 | Ch, Admin Law Br | 9th Inf Div | Ft Lewis, WA |
| CPT | 21J | 01 | 01 | JA | 9th Inf Div | Ft Lewis, WA |
| CPT | 03B | 02 | 01 | JA | USA Garrison | Ft Buchanan, PR |
| MAJ | 03D | 01 | 01 | Ch, JA | USA Garrison | Ft Buchanan, PR |
| CPT | 03E | 02 | 01 | JA | USA Garrison | Ft Buchanan, PR |
| MAJ | 05F | 02 | 01 | Mil Affrs Off | USA Armor Cen | Ft Knox, KY |
| MAJ | 04A | 03 | 01 | Sr Def Counsel | USA Inf Cen | Ft Benning, GA |
| LTC | 04B | 02 | 01 | Asst Ch, MALAC | USA Inf Cen | Ft Benning, GA |
| CPT | 04B | 04 | 01 | Admin Law Off | USA Inf Cen | Ft Benning, GA |
| CPT | 04B | 05 | 01 | Admin Law Off | USA Inf Cen | Ft Benning, GA |
| CPT | 04B | 05 | 02 | Admin Law Off | USA Inf Cen | Ft Benning, GA |
| CPT | 04B | 07 | 03 | Legal Asst Off | USA Inf Cen | Ft Benning, GA |
| CPT | 04B | 08 | 01 | Claims Off | USA Inf Cen | Ft Benning, GA |
| MAJ | 09A | 02 | 01 | Asst SJA | USA Signal Cen | Ft Gordon, GA |
| MAJ | 09B | 02 | 02 | Asst SJA | USA Signal Cen | Ft Gordon, GA |
| CPT | 22D | 22 | 01 | Instr OCS Tng DI | USA Signal Cen | Ft Gordon, GA |
| CPT | 22D | 22 | 02 | Instr OCS Tng DI | USA Signal Cen | Ft Gordon, GA |
| CPT | 07A | 03 | 02 | JA | Avn Center | Ft Rucker, AL |
| CPT | 07A | 04 | 01 | JA | Avn Center | Ft Rucker, AL |

| GRD | PARA | LINE | SEQ | POSITION | AGENCY | CITY |
|-----|------|------|-----|------------------|-----------------------|--------------------|
| CPT | 38A | 03 | 04 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| CPT | 38A | 03 | 05 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| CPT | 38A | 03 | 06 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| CPT | 38A | 03 | 07 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| MAJ | 38B | 02 | 01 | Admin Law Off | USA Garrison | Ft Chaffee, AR |
| MAJ | 38B | 02 | 02 | Admin Law Off | USA Garrison | Ft Chaffee, AR |
| CPT | 38B | 04 | 01 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| CPT | 38B | 04 | 02 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| CPT | 38B | 04 | 03 | Asst SJA | USA Garrison | Ft Chaffee, AR |
| CPT | 05A | 04 | 01 | Trial Counsel | USA FA Cen | Ft Sill, OK |
| CPT | 05A | 04 | 02 | Trial Counsel | USA FA Cen | Ft Sill, OK |
| CPT | 05A | 07 | 01 | Defense Counsel | USA FA Cen | Ft Sill, OK |
| CPT | 05A | 07 | 02 | Defense Counsel | USA FA Cen | Ft Sill, OK |
| CPT | 05A | 07 | 03 | Defense Counsel | USA FA Cen | Ft Sill, OK |
| MAJ | 05B | 03 | 01 | Admin Law Off | USA FA Cen | Ft Sill, OK |
| MAJ | 05B | 03 | 02 | Admin Law Off | USA FA Cen | Ft Sill, OK |
| CPT | 05B | 05 | 01 | Proc Fis Law Off | USA FA Cen | Ft Sill, OK |
| CPT | 05B | 07 | 01 | Legal Asst Off | USA FA Cen | Ft Sill, OK |
| CPT | 05B | 07 | 02 | Legal Asst Off | USA FA Cen | Ft Sill, OK |
| CPT | 05B | 07 | 03 | Legal Asst Off | USA FA Cen | Ft Sill, OK |
| MAJ | 05 | 01A | 01 | Dep SJA | USA Admin Cen | Ft B Harrison, IN |
| CPT | 11D | 06 | 01 | Instr | USA Intel Cen | Ft Huachuca, AZ |
| CPT | 11D | 06 | 03 | Instr | USA Intel Cen | Ft Huachuca, AZ |
| MAJ | 12 | 02 | 02 | Asst JA | ARNG TSA Cp Atterbury | Edinburg, IN |
| CW4 | 02 | 03 | 01 | Legal Admin Tech | 1st Inf Div | Ft Riley, KS |
| CW4 | 03A | 01 | 01 | Legal Admin Tech | 5th Inf Div | Ft Polk, LA |
| CW4 | 04 | 10 | 01 | Legal Admin Tech | USA Garrison | Ft Sam Houston, TX |
| CW4 | 04 | 04 | 01 | Legal Admin Tech | USA Garrison | Ft Bragg, NC |
| CW4 | 03 | 03 | 01 | Legal Admin Tech | 101st Abn Div | Ft Campbell, KY |

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Cross-Examination

Trial counsel should exercise care to restrict the scope of cross-examination to proper matters. Usually cross-examination covers matters raised on direct examination or related to credibility. Paragraph 149b, MCM. Its scope is particularly critical when the witness is the accused. In a recent rape case, the accused testified only on the question of penetration. During cross-examination, the trial counsel inquired into the status of the accused's expeditious discharge and his condition of having syphilis at the time of the offense. The scope of cross-examination of an accused is generally broader than that of an ordinary witness. Paragraph 149b(1), MCM. However, trial counsel should consider whether matters offered will be probative or overly prejudicial and avoid questions that are unnecessarily inflammatory.

2. Immunity

Care must be exercised when prosecuting an accused who has previously testified concerning the same offense pursuant to a grant of testimonial immunity. Trial counsel must fully document on the record the "independent, legitimate source" of all evidence used against the accused. *United States v. Rivera*, 1 M.J. 107 (CMA 1975). A recent accused charged with robbery had previously testified under a grant of testimonial immunity. During this accused's court-martial, the trial counsel stated on the record that he had not participated in the prior court-martial and that all evidence to be used had "an independent, legitimate source." Appellant alleges before CMR that this is an inadequate demonstration of the showing of an independent basis. Once the accused raises the claim of prior immunity, the Government must do more than make a representation of inde-

pendent basis. Establishing the independent basis is a question of fact that must be demonstrated on the record. This should include a detailed statement by the trial counsel as to his lack of contact with the accused's prior statements or testimony. It is important that the trial counsel have absolutely no contact with the accused's prior immunized testimony. Any contact will be interpreted as a violation of the grant of immunity. The prosecuting counsel must not read either the record of trial where the accused was a witness or its review. Additionally, the basis for all evidence used should be demonstrated on the record. This can best be accomplished by detailing the evidence existing prior to the grant of immunity. If possible, no evidence should be used which is discovered after the grant of immunity. If subsequently discovered evidence is used it will be closely examined and its source must be carefully documented.

3. Pretrial Agreement

Whenever the accused pleads guilty pursuant to a pretrial agreement, the Government should insist upon a stipulation of fact. This stipulation should be used to assist the judge in conducting a providence inquiry, to present facts for sentence consideration, and to preserve the facts for the appellate process. The accused in a recent case pled guilty to two separate specifications of possession of hashish. The pretrial agreement allowed a stipulation; however, one was never prepared. On appeal the defense now alleges that the two offenses are multiplicitious for findings. The only facts available are the accused's somewhat self-serving statement during providence. Although the allied papers clearly established that the offenses are not multiplicitious, use of a stipulation may have avoided an appellate issue.

CLE News

1. Criminal Law New Developments. The 4th Criminal Law New Developments Course will be held from 25 to 27 August 1980. The course, which is designed to provide counsel and criminal law administrators with information on recent developments in criminal law, will place emphasis upon the new Military Rules of Evidence. Students must not have attended any TJAGSA resident criminal law courses or the Basic or Graduate courses within a period of twelve months preceding 25 August 1980.

2. TJAGSA CLE Courses

August 4-October 3: 93d Judge Advocate Officer Basic (5F-F20).

August 4-8: 55th Senior Officer Legal Orientation (5F-F1).

August 4-8: 10th Law Officer Management (7A-713A).

August 18-May 22, 1981: 29th Graduate Course (5-27-C22).

August 25-27: 4th Criminal Law New Developments (5F-F35).

September 10-12: 2d Legal Aspects of Terrorism (5F-F43).

September 22-26: 56th Senior Officer Legal Orientation (5F-F1).

October 14-17: World Wide JAG Conference.

October 20-December 19: 94th Basic Course (5-27-C20).

November 4-7: 12th Fiscal Law (5F-F12).

November 17-21: 57th Senior Officer Legal Orientation (5F-F1).

November 17-21: 15th Law of War Workshop (5F-F42).

December 4-6: USAR JAGC Conference.

December 8-12: 8th Advanced Administrative Law (5F-F25).

December 8-19: 86th Contract Attorneys Course (5F-F10).

December 15-17: 5th Government Information Practices (5F-F28).

January 5-9: 16th Law of War Workshop (5F-F42).

January 5-9: 11th Contract Attorneys Advanced (5F-F11).

January 12-16: 2nd Negotiations, Changes, and Terminations (5F-F14).

January 15-17: JAGC NG Conference.

January 19-23: 8th Legal Assistance (5F-F23).

January 26-30: 58th Senior Officer Legal Orientation (5F-F1).

February 2-5: 10th Environmental Law (5F-F27).

February 2-Apr 3: 95th Basic Course (5-27-C20).

February 9-13: 9th Defense Trial Advocacy (5F-F34).

February 18-20: 3d CITA Workshop (TBD).

February 23-27: 2nd Prosecution Trial Advocacy (5F-F32).

March 2-6: 20th Federal Labor Relations (5F-F22).

March 9-20: 87th Contract Attorneys (5F-F10).

April 6-10: 59th Senior Officer Legal Orientation (5F-F1).

April 13-14: 3d U.S. Magistrate Workshop (5F-F53).

April 27-May 1: 11th Staff Judge Advocate Orientation (5F-F52).

May 4-8: 60th Senior Officer Legal Orientation (Army War College) (5F-F1).

May 4-8: 3d Military Lawyer's Assistant (512-71D20/50).

May 11-15: 1st Administrative Law for Military Installations (TBD).

May 18-June 5: 22nd Military Judge (5F-F33).

June 1-12: 88th Contract Attorneys (5F-F10).

June 8-12: 61st Senior Officer Legal Orientation (5F-F1).

June 15-26: JAGSO Reserve Training.

July 6-17: JAGC RC CGSC.

July 6-17: JAGC BOAC (Phase IV).

July 20-31: 89th Contract Attorneys (5F-F10).

July 20-August 7: 23d Military Judge Course (5F-F33).

August 3-October 2: 96th Basic Course (5-27-C20).

August 10-14: 62nd Senior Officer Legal Orientation (5F-F1).

August 17-May 22, 1982: 30th Graduate Course (5-27-C22).

August 24-26: 5th Criminal Law New Developments (5F-F35).

September 8-11: 13th Fiscal Law (5F-F12).

September 21-25: 17th Law of War Workshop (5F-F42).

September 28-October 2: 63d Senior Officer Legal Orientation (5F-F1).

3. Civilian Sponsored CLE Courses

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ALI-ABA: Donald M. MacLay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 243-1630.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of America, Education Department, P.O. Box 3717, 1050 31st St. NW Washington, DC 20007. Phone: (202) 965-3500.

BCGI: Brandon Consulting Group, Inc., 1775 Broadway, New York, NY 10019.

BNA: The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, DC 20037.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA (FBA-BNA): Conference Secretary, Federal Bar Association, Suite 420, 1815 H Street NW, Washington, DC 20006. Phone: (202) 638-0252.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GCP: Government Contracts Program, George Washington University Law Center, Washington, DC.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GWU: Government Contracts Program, George Washington University, 2000 H Street NW, Rm. 303 D2, Washington DC 20052. Phone: (202) 676-6815.

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson P.O. Box 767, Raleigh, NC 27602.

NCAJ: National Center for Administration of Justice, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC 27602.

NCCDL: National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJJ: National Council of Juvenile and Family, Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NDCLE: North Dakota Continuing Legal Education.

NITA: National Institute for Trial Advocacy, University of Minnesota Law School, Minneapolis, MN 55455.

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.

NPI: National Practice Institute, 861 West Butler Square, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TBI: The Bankruptcy Institute, P.O. Box 1601, Grand Central Station, New York, NY 10017.

UDCL: University of Denver College of Law, 200 West 14th Avenue, Denver, CO 80204.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

October

1: IPT, The Federal Rules of Evidence, Washington, DC.

2-3: FPI, Construction Labor Relations, Williamsburg, VA.

2-3: MICLE, Accounting for Lawyers, Detroit, MI.

3-5: NCCDL, Investigation Techniques, San Diego, CA.

3-4: PLI, Hospital Liability and Risk Management, San Francisco, CA.

5-10: NJC, Criminal Evidence, Reno, NV.

5-10: NCDA, Prosecutor's Investigation School, Huntsville, TX.

6: NCATL, Client Interviewing and Counseling, Raleigh, NC.

6-8: CCLE, Research and Development Contracting, Washington, DC.

- 6-8: FPI, Subcontracting, Lake Tahoe, NV.
- 6-10: CCLE, Government Construction Contracting, Washington, DC.
- 6-10: AAA, Contract Negotiations Institute, Seattle, WA.
- 9-10: PLI, Estate Planning Institute, New York City, NY.
- 9-10: FPI, Freedom of Information, Washington, DC.
- 9-10: GICLE, Bankruptcy Reform Act, Savannah, GA.
- 9-10: PLI, Current Developments in Bankruptcy, New York City, NY.
- 9-11: AAJE, The Alcohol and Drug Abuse Offender, Washington, DC.
- 9-11: ALIABA, Energy Law, Chicago, IL.
- 9: VACLE, Civil Litigation—Damages, Abingdon, VA.
- 10: VACLE, Civil Litigation—Damages, Roanoke, VA.
- 12-17: NJC, Administrative Law: Licensing, Regulation, and Enforcement, Reno, N.
- 12-17: NJC, Alcohol and Drugs, Reno, NV.
- 12-24: NJC, Special Court Jurisdiction, Reno, NV.
- 13-15: FPI, Claims and the Construction Owner, Washington, DC.
- 13-15: FPI, Contracting with the Little Guys, Berkeley, CA.
- 13-15: FPI, Practical Labor Law, San Diego, CA.
- 13-16: FPI, The Contracting Officer, Washington, DC.
- 13: MICLE, Effective Advocacy of Civil Jury Trials, Detroit, MI.
- 16-17: SLF, Labor Law Institute, Dallas, TX.
- 16-17: PLI, Negotiating Collective Bargaining, New York City, NY.
- 16-17: ABA, International Estate Planning, San Francisco, CA.
- 16: VACLE, Civil Litigation—Damages, Richmond, VA.
- 17: SCB, Trial Advocacy: Closing Statements and Post Trial Motions, Columbia, SC.
- 17: VACLE, Civil Litigation—Damages, Alexandria, VA.
- 18: PATLA, Selection, Preparation, and Use of Expert Witnesses in Products Liability Cases, Valley Forge, PA.
- 19-24: NJC, Administrative Law: Claims and Benefits, Reno, NV.
- 19-24: NJC, Search and Seizure, Reno, NV.
- 20-22: FPI, Changes in Government Contracts, Denver, CO.
- 20-22: FPI, Practical Environmental Law, Berkeley, CA.
- 20-22: FPI, Practical Negotiation of Government Contracts, Denver, CO.
- 20-22: PLI, Fundamental Estate Administration, Chicago, IL.
- 20-21: AAA, Evidence Workshop, Denver, CO.
- 20-21: IPT, How to Understand and Follow the Federal Regulatory and Legislative Process, Washington, DC.
- 23-24: PLI, Evaluation and Settlement of a Personal Injury Case, Los Angeles, CA.
- 23-24: PLI, Basic Will Drafting Techniques, New York City, NY.
- 23-24: PLI, Hospital Liability & Risk Management, San Francisco, CA.
- 23: VACLE, Civil Litigation—Damages, Norfolk, VA.
- 24-26: NCCDL, Insanity Defenses, New England.
- 24: SCB, Judicial CLE: Hearsay, Columbia, SC.
- 24: VACLE, Civil Litigation—Damages, Staunton, VA.
- 26-30: ABA, Appellate Judge Seminar, Cambridge, MA.
- 27-28: FPI, Freedom of Information, Berkeley, CA.
- 27-28: FPI, Public Employee Unionism, Atlanta, GA.
- 27-29: FPI, Construction Scheduling and Proof of Claims, Phoenix, A.
- 27-29: FPI, Contracting with the Little Guys, Washington, DC.
- 27-29: FPI, Negotiated Procurement, Las Vegas, NV.
- 27-29: FPI, Practical Construction Law, Berkeley, CA.
- 27-31: NCDA, Organized Crime—Part I, Philadelphia, PA.
- 28-30: IPT, Law Office Administration, San Diego, CA.
- 29-30: IPT, Techniques of Fact Investigation and Interviewing, New York City, NY.
- 30-31: FPI, Construction Labor Relations, Berkeley, CA.
- 31: SCB, Construction Litigation, Columbia, SC.

Non-Judicial Punishment**Quarterly Punishment Rates Per 1000 Average Strength****January-March 1980**

| | Quarterly Rates |
|---|--------------------|
| ARMY-WIDE ----- | 48.56 |
| CONUS Army commands ----- | 53.16 |
| OVERSEAS Army commands ----- | 41.23 |
| USAREUR and Seventh Army commands ----- | 37.45 |
| Eighth US Army ----- | 52.38 |
| US Army Japan ----- | 9.23 |
| Units in Hawaii ----- | 42.94 |
| Units in Thailand ----- | — |
| Units in Alaska ----- | 31.02 |
| Units in Panama ----- | 44.57 |

Courts-Martial**Quarterly Court-Martial Rates Per 1000 Average Strength****January-March 1980**

| | General CM | Special CM | | Summary CM |
|---|---------------|---------------|---------|---------------|
| | | BCD | Non-BCD | |
| ARMY-WIDE ----- | .41 | .46 | .99 | 1.10 |
| CONUS Army commands ----- | .27 | .38 | .97 | 1.25 |
| OVERSEAS Army commands ----- | .71 | .58 | 1.02 | .87 |
| USAREUR and Seventh Army commands ----- | .76 | .51 | .79 | .50 |
| Eighth US Army ----- | .36 | 1.05 | 1.56 | 2.10 |
| US Army Japan ----- | | | | |
| Units in Hawaii ----- | .39 | .17 | 1.80 | 1.58 |
| Units in Thailand ----- | | | | |
| Units in Alaska ----- | 1.06 | .70 | 1.76 | 2.64 |
| Units in Panama ----- | .14 | .55 | 1.93 | 3.30 |

NOTE: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

Professional Activities

1. Second Annual Joint Conference on Military Law and Lawyers

During the midyear meeting of the American Bar Association, the Military Service Lawyers Committee of the Young Lawyers Division sponsored the Second Annual Joint Conference on Military Law and Lawyers. Nearly all the military law-related committees of the ABA were represented. Current projects of these committees include the following:

- (1) Consideration of a Washington State Bar Resolution calling for review of the military justice system.
- (2) Consideration of agency rule-making provision particularly as related to the new military rules of evidence.
- (3) Study of the uniformity and fairness of administrative discharges.
- (4) Investigation of the possibility of creating a professional allowance for military lawyers to retain state bar certification.
- (5) Consideration of a judicial selection committee for military judgeships.
- (6) Adoption of a bill to create a statutory basis for legal assistance.
- (7) Adoption of a legal check list for military personnel leaving the Armed Forces.
- (8) Expansion of "Operation Standby" whereby local lawyers (currently in Florida) aid military legal assistance attorneys.
- (9) Improvement of procedures applicable to correcting military records.
- (10) Preparation of a comparative analysis between the Federal Rules of Criminal Procedure and military procedure.

More information about the projects listed and the committees which are considering each topic may be obtained either from Major Ted B. Borek, USALSA (GAD), Nassif Building, Falls Church, Virginia 22041 (current ABA/YLD Delegate) or Captain Jan W. Serene,

(DAJA-ALG), Pentagon, Washington, D.C. 20310 (ABA/YLD Delegate after August 1980).

2. Upcoming Professional Meetings

For personal as well as official planning purposes, you may be interested in the following meeting schedules:

(1) American Bar Association

- 1980 Annual Meeting, 31 July-6 August, Honolulu, Hawaii
- 1981 Midyear Meeting, February, Houston, Texas
- 1981 Annual Meeting, August, New Orleans, Louisiana
- 1982 Midyear Meeting, February, Chicago, Illinois
- 1982 Annual Meeting, August, San Francisco, California
- 1983 Midyear Meeting, February, New Orleans, Louisiana
- 1983 Annual Meeting, August, Atlanta, Georgia

(2) Federal Bar Association

- 1980 Annual Meeting, 25-29 August, Washington, D.C.
- 1981 Annual Meeting, August, Denver, Colorado

(3) National Bar Association

- 1980 Annual Meeting, 3-9 August, Dallas, Texas
- 1981 Midyear Meeting, February, Washington, D.C.
- 1981 Annual Meeting, August, Detroit, Michigan
- 1982 Annual Meeting, August, Atlanta, Georgia

JAGC Personnel Section*PP&TO, OTJAG***1. Recruiting**

The JAGC has been operating at below end strength authorization for the last two years. The FY80 authorized end strength for the JAGC is 1647 officers. Strength reports as of December 1979 showed 1508 officers on active duty, for a shortage of 139 lawyers.

To correct this deficiency Major General Harvey directed that planning begin to expand the Corps' recruiting effort. On 2 April 1980, the establishment of a JAGC Recruiting Office was approved by the Office, Chief of Staff Army.

Effective 1 July 1980, the Army JAGC Professional Recruiting Office will be operational. While physically located in the US Army Legal Services Agency (USALSA), it will be operated under the policy guidance of the Chief, Personnel, Plans and Training Office, OTJAG. In excess of \$90,000 has been budgeted to operate this office for FY81. The mailing address and telephone numbers will be:

Army JAGC Professional Recruiting Office
5611 Columbia Pike
Falls Church, VA 22041
289-1792, 1793, 1794 (Autovon)
703-756 + extension (Commercial)

This office will feature an incoming toll free 800 line. The number is 800-336-3315 and can be used by potential applicants anywhere in the continental United States, except Virginia. Virginia residents may call 703-756-1792 collect.

2. RA Promotions

The following officers have been selected for promotion to Lieutenant Colonel, RA:

BEANS, Harry C.
BONFANTI, Anthony
CHUCALA, Steven
CREEKMORE, Joseph
DAVIES, David C.
DYGERT, George
ENDICOTT, James A.
FOREMAN, Leroy
HUG, Jack
ISKRA, Wayne R.
KULISH, Jon
LEWIS, Jerome X.
MALINOSKI, Joseph
MC COLL, Archibald
MC GOWAN, James J.
MC HUGH, Richard K.
MURRAY, Charles R.
RICE, Leonard
RUNKE, Richard
SHERWOOD, John
SHIMEK, Daniel
WATKINS, Charlie C.
WHITTEN, William
YAWN, Malcolm T.

The selection rate for Army Promotion List officers considered for the first time was 78.7%. Ninety (90) percent of the Judge Advocate officers considered for the first time were selected.

Current Materials of Interest**1. Department of the Army Publications**

Department of the Army Field Manual 27-14
Legal Guide for the Soldier, 23 May 1980. Supersedes DA Pam 27-14, 30 March 1973.

Department of the Army Pamphlet 27-17,

Procedural Guide for Article 32(b) Investigating Officer, 15 May 1980. Supersedes DA Pam 27-17, 10 June 1970 including all changes.

Department of the Army Pamphlet 27-21,
Military Administrative Law Handbook,

Change No. 4, 15 May 1980. Revises chapters 1, 2, 6 and 8.

3. Current Messages and Publications

2. Book Review

White, LTC Charles A., JAGC, U.S. Army War College, Class of 1980. *Military Obedience*, by N. Keijzer. Reviewed in 12 Vanderbilt Journal of Transnational Law 1043 (Fall, 1979).

The following lists of recent messages and changes to selected publications is furnished for your information in keeping your reference materials up to date. All offices may not have a need for and may not have been on distribution for some of the messages and/or publications listed.

a. Messages

| DTG | SUBJECT | PROPONENT |
|----------------|---|-------------|
| 091930Z May 80 | Expert Witnesses | DASG-PSC |
| 151830Z May 80 | Future Changes to AR 635-5-1, Personnel Separations, Separation Designators | DAPC-MSF-RS |
| 231200Z May 80 | Review of CITA Solicitations Prior to Issuance | ATPL-TC |
| 051300Z Jun 80 | Preparation of Charge Sheets | PCRE-RD-P |
| 051500Z Jun 80 | Payment of Mortgage Insurance Premiums (MIPs)—Interim Guidance | DAPC-EPA-P |

b. Publications

| NUMBER | TITLE | CHANGE | DATE |
|----------------|---|--------|-----------|
| AR 135-100 | Appointment of Commissioned and Warrant Officers of the Army. | 902 | 5 May 80 |
| AR 135-155 | Promotion of Commissioned Officers and Warrant Officers Other Than General Officers. | 901 | 5 May 80 |
| AR 135-180 | Qualifying Service for Retired Pay Non-regular Service. | 4 | 1 May 80 |
| AR 135-210 | Order to Active Duty as Individuals During Peacetime. | 901 | 5 May 80 |
| AR 310-2 | Identification and Distribution of DA Publications and Issue of Agency and Command Administrative Publications. | 3 | 15 May 80 |
| AR 670-1 | Wear and Appearance of Army Uniforms and Insignia. | 904 | 21 Apr 80 |
| DA Pam 27-21 | Military Administrative Law Handbook. | 4 | 15 May 80 |
| *DA Pam 310-1 | Index of Administrative Publications. | | 1 Mar 80 |
| *DA Pam 310-2 | Index of Blank Forms. | | 15 Mar 80 |
| *DA Pam 310-99 | Index of Obsolete Forms/Publications Current as of 1 Apr 80. | | 1 Apr 80 |
| DA Pam 360-503 | 1980 Voting Assistance Guide. | 901 | 29 Apr 80 |
| * Microfiche | | | |

